IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

OP.No. 19202 of 1998(J)

PETITIONER:

K.RAJALAKSHMYU,
HEADMISTRESS, GOVERNMENT HIGH SCHOOL,
RAMAVARMAPURAM, THRISSUR.

BY ADV. SRI.P.K.ASHOKAN

RESPONDENTS:
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1. **THE DIRECTOR OF PUBLIC INSTRUCTIONS,**
   THIRUVANANTHAPURAM.

2. **STATE OF KERALA, REP.BY THE CHIEF**
   SECRETARY TO GOVERNMENT, SECRETARIATE,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.19202/1998

ORDER ON CMP. NO.33863/1998 IN OP. 19202/1998

DISMISSED

30.11.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.SC-8/98 KKD DT. 28.3.98 ISSUED BY THE IST RESPONDENT.

EXT.P2:- COPY OF THE EXPLANATION DT. 7.5.98 SUBMITTED BY PETITIONER.

EXT.P3:- COPY OF THE POSTAL RECEIPT DT. 8.5.98.

EXT.P4:- COPY OF THE ORDER ISSUED BY IST RESPONDENT DT. 7.8.98.

EXT.P5:- COPY OF THE ORDER NO.SC.(1)/042023/970DDI DT. 2.6.97 OF THE IST RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

tss

S.SIRI JAGAN,J

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O.P.No.19202 of 1998

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Dated this the 30th day of November, 2007

JUDGMENT

The petitioner challenges Ext.P4 order of the Director of Public Instruction, whereby the petitioner, who retired as an Assistant Educational Officer, Wadakkanchery, has been found responsible for irregular fixation of staff strength of L.P.S, Veerolipadam for the academic year 1997-1998 and on that ground 50% of the liability in respect of the posts sanctioned on such fixation of staff strength which had to be abolished on super check, was directed to be recovered from the petitioner. The petitioner raises several contentions. One is that Ext.P4 order has been passed without notice to the petitioner. Second is that the Director of Public Instruction does not have power to recover damages in exercise of powers under the Kerala Service Rules. He also contends that there is no finding by the DPI that the petitioner was in any way privy to the malpractices which resulted in sanction of additional divisions based on bogus admissions. Petitioner relies on the decision of this Court in **Vasudevan Namboodiri v. State of Kerala (1997(2) KLT 529)**, in support of that contention. In so far as, I am inclined to

accept the contention of the petitioner that Ext.P4 is unsustainable for want of notice to the petitioner, I am not going into the other contentions.

2. The learned Government Pleader could not satisfy me that Ext.P4 was passed after notice to the petitioner. When the liability has been sought to be fixed on the petitioner, the petitioner ought to have been granted an opportunity of being heard before passing that part of the Ext.P4 order affecting the petitioner. In that view Ext.P4 is quashed. If the respondents still wish to proceed further against the petitioner, that shall only be after notice to the petitioner and affording an opportunity of being heard. All the other contentions of the petitioner are left open to be agitated by the petitioner in the event of the respondents initiating further proceedings. If no proceedings are initiated afresh within a period of two months, petitioner's retirement benefits shall be disbursed immediately after two months.

The writ petition is disposed of accordingly.

S.SIRI JAGAN, JUDGE

dvs